Petition

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

LEE STOLLER ENTERPRISES, INC., LEE STOLLER, JOHN M. COOPER, and JOHN MAERAS,
Petitioners,

vs.

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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QUESTIONS PRESENTED FOR REVIEW

I.

Whether A Public Entity, The Office Of County Sheriff, Can Be A "Enterprise" Within The Meaning Of The RICO Statute?

II.

Whether One Defendants Complicity In One Type Of Unlawful Activity In The Conduct Of The Affairs Of An Enterprise Can Make Him Criminally Responsible Under RICO For Other And Distinct Types Of Unlawful Activity For Which He Has No Knowledge Or Responsibility?

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vs.

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

OPINIONS BELOW

The Trial Court on May 25, 1975, entered Judgments and Commitment Orders finding the Defendants guilty. The Defendants Leland L. Stoller, Lee Stoller Enterprises, Inc., John Maeras, and John Cooper were found guilty of conspiracy to violate RICO, 18 Untied States Code, Section 1962(d), found guilty of eighteen (18) counts of conspiracy to commit mail and wire fraud, 18 United States Code, Sections 1341, 1343, and the Defendants Maeras and Cooper were found guilty of making or inducing false statements within the jurisdiction of the Internal Revenue Service, 18 United States Code, Section 1001.

The Court on May 25, 1979, sentenced Stoller to three (3) years' imprisonment and fined Lee Stoller Enterprises, Inc., $10,000. Cooper was sentenced to a total of fifteen (15) years' imprisonment and Maeras likewise was sentenced to a total of fifteen (15) years' imprisonment as well. The United States

Court of Appeals for the Seventh Circuit on June 30, 1981, hearing the cause en banc in a decision by a four to three majority affirmed the convictions of the defendant. After the appeal was first argued before a panel of the Seventh Circuit but prior to a decision, the judges in regular active service voted to hear the appeal en banc because of the importance of the issue of whether a public entity may be a RICO "enterprise".

JURISDICTIONAL STATEMENT

The jurisdiction of this Court is invoked under the provisions of Section 1254(1), Title 28, United States Code.

The petitioner seeks review of the order of the United States Court of Appeals for the Seventh Circuit entered on June 30, 1980.

STATUTES INVOLVED

18 United States Code, Section 1961:

(1) "Racketeering activity" means (A) any act or threat involving murder, kidnapping, gambling, arson, robbery, bribery, extortion, or dealing in narcotic or other dangerous drugs, which is chargeable under State law and punishable by imprisonment for more than one year; (B) any act which is indictable under any of the following provisions of title 18, United States Code: Section 201 (relating to bribery), section 224 (relating to sports bribery), sections 471, 472, and 473 (relating to counterfeiting), section 659 (relating to theft from interstate shipment) if the act indictable under section 659 is felonious, section 664 (relating to embezzlement from pension and welfare funds), sections 891-894 (relating to extortionate credit transactions), section 1084 (relating to the transmission of gambling information), section 1341 (relating to mail fraud), section 1343 (relating to wire fraud), section 1503 (relating to obstruction of justice, section 1510 (relating to obstruction of

criminal investigations), section 1511 (relating to the obstruction of State or local law enforcement), section 1951 (relating to interference with commerce, robbery, or extortion) section 1952 (relating to racketeering), section 1953 (relating to interstate transportation of wagering paraphernalia), section 1954 (relating to unlawful welfare fund payments), section 1955 (relating to prohibition of illegal gambling businesses), sections 2314 and 2315 (relating to interstate transportation of stolen property), sections 2341-2346 (relating to trafficking in contraband cigarettes), sections 2421-24 (relating to white slave traffic), (C) any act which is indictable under title 29, United States Code, section 186 (dealing with restrictions on payments and loans to labor organizations) or section 501(c) (relating to embezzlement from union funds), or (D) any offense involving fraud connected with a case under title 11, fraud in the sale of securities, or the felonious manufacture, importation, receiving, concealment, buying, selling, or otherwise dealing in narcotic or other dangerous drugs punishable under any law of the United States;

(2) "State" means any State of the United States, the District of Columbia, the Commonwealth or Puerto Rico, any territory or possession of the United States, any political subdivision, or any department, agency, or instrumentality thereof:

(3) "person" includes any individual or entity capable of holding a legal or beneficial interest in property;

(4) "enterprise" includes any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity;

(5) "pattern of racketeering activity" requires at least two acts of racketeering activity, one of which occurred after the effective date of this chapter and the last of which occurred within ten years (excluding any period of imprisonment) after the commission of a prior act of racketeering activity;

(6) "unlawful debt" means a debt (A) incurred or contracted in gambling activity which was in violation of the law of the United States, a State or political subdivision thereof, or which is unenforceable under State or Federal law in whole or in part as to principal or interest because of the laws relating to usury, and (B) which was incurred in connection with the business of gambling in violation of the law of the United States, a State or political subdivision thereof, or the business of lending money or a thing of value at a rate usurious under State or Federal law, where the usurious rate is at least twice the enforceable rate;

(7) "racketeering investigator" means any attorney or investigator so designated by the Attorney General and charged with the duty of enforcing or carrying into effect this chapter;

(8) "racketeering investigation" means any inquiry conducted by any racketeering investigator for the purpose of ascertaining whether any person has been involved in any violation of this chapter or of any final order, judgment, or decree of any court of the United States, duly entered in any case or proceeding arising under this chapter;

(9) "documentary material" includes any book, paper, document, record, recording, or other material; and

(10) "Attorney General" includes the Attorney General of the United States, the Deputy Attorney General of the United States, any Assistant Attorney General of the United States, or any employee of the Department of Justice or any employee of any department or agency of the United States so designated by the Attorney General to carry out the powers conferred on the Attorney General by this chapter. Any department or agency so designated may use in investigations authorized by this chapter either the investigative provisions of this chapter or the investigative power of such department or agency otherwise conferred by law.

18 United State Code, Section 1962

(a) It shall be unlawful for any person who has received any income derived, directly or indirectly, from a pattern of racketeering activity or through collection of an unlawful debt in which such person has participated as a principal within the meaning of section 2, title 18, United States Code, to use or invest, directly or indirectly any part of such income, or the proceeds of such income, in acquisition of any interest in, or the establishment or operation of, any enterprise which is engaged in or the activities or which affect, interstate or foreign commerce. A purchase of securities on the open market for purposes of investment, and without the intention of controlling or participating in the control of the issuer, or of assisting another to do so, shall not be unlawful under this subsection if the securities of the issuer held by the purchaser, the members of his immediate family, and his or their accomplices in any pattern or racketeering activity of the collection of an unlawful debt after such purchase do not amount in the aggregate to one percent of the outstanding securities of any one class, and do not confer, either in law or in fact, the power to elect one or more directors of the issuer.

(b) It shall be unlawful for any person through a pattern of racketeering activity or through collection of an unlawful debt to acquire or maintain, directly or indirectly, any interest in or control of any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce.

(c) It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt.

(d) It shall be unlawful for any person to conspire to violate any of the provisions of subsections (a), (b), or (c) of this section.

STATEMENT OF THE CASE

A. First Instance of Federal Jurisdiction

On November 29, 1978, the defendants were indicted for conspiracy to violate RICO, 18 United States Code, Section 1962(d). All defendants were also charged with fourteen (14) counts of mail fraud, 18 United States Code, Section 1341 and six (6) counts of wire fraud, 18 United States Code, Section 1343. Four counts charged defendants Maeras and Cooper with making or inducing false statements within the jurisdiction of the Internal Revenue Service, 18 United States Code, Section 1001. One final count charged Maeras and Cooper with obstructing justice, 18 United States Code, Section 1503. At the close of the government's case, the Trial Court dismissed two counts of wire fraud and the obstruction of justice count. The defendants were indicted in the United States District Court for the Southern District of Illinois.

B. The Indictment

The Defendants were charged in lengthy indictment with conducting the affairs of an "enterprise" affecting interstate commerce through a pattern of racketeering activity through multiple acts of bribery, extortion, mail fraud and wire fraud. The enterprise was specifically identified as the Madison County Sheriff's Department. The indictment charged that Maeras and Cooper would utilize their official positions as Sheriff and Chief Deputy to solicit and accept payments from operators of business establishments such as houses of prostitution, service stations and towing companies, while tending to be influenced in the performance of acts relating to their employment and functions as public officials. Stoller and Stoller Enterprises, Inc., were charged with associating with said enterprise. (Record page 1)

Stoller and Stoller Enterprises, Inc., joined the conspiracy by reason that they were hired by the Madison County Sheriff's

Association to solicit by mail and telephone contributions to the Association. The indictment further alleged that Maeras required that Stoller and Stoller Enterprises, Inc., to kickback ten percent of the monies collected for contributions to the Association. (Record page 1)

The Defendants were charged with conspiracy to commit mail and wire fraud in other counts and for making false statements to the Internal Revenue Service.

C. **The Evidence**

Maeras, the Sheriff of Madison County, and Cooper his Deputy Sheriff, solicited payoffs from houses of prostitution and tow truck operators early in 1971. Cooper and others would solicit and return monies to the Sheriff. The payoffs continued until approximately January of 1973. The payoffs were for protection of gambling and prostitution and pertaining to the tow truck operations, the opportunity to tow vehicles at the request of the Sheriff's Department. (Transcript 1470, page 748)

Stoller and Stoller Enterprises, Inc., were retained by the Sheriff's Association to raise money for the Association by a dance and mail and telephone solicitations. The first dance was sponsored in February of 1972. (Transcript 161-162) The Sheriff demanded that he be paid a percentage of the solicitations by the Defendant Stoller and an agreement was finally reached where Stoller was paid ten percent of the money solicitated off the top to the Sheriff which was reduced somewhat later. (Transcript 169-170). The Association terminated all business with Stoller about December 1, 1975. All in all approximately ten to twelve thousand dollars was paid to the Sheriff by Stoller via Cooper and another. (Transcript 488, 200).

There is no evidence in the record that Stoller or Stoller Enterprises, Inc., knew of or participated in any of the prostitution payoffs, tow truck operations, gambling payoffs and other

illicit activities of Maeras and Cooper in their capacity with enterprise, the Sheriff's Department. The Defendants Stoller were engaged in the RICO conspiracy by reason of their payoffs to the Sheriff pertaining to the solicitation.

The Defendants Stoller and Maeras denied any solicitation for payoffs and denied any agreement to kickback ten percent. Witnesses were presented to corroborate this testimony. The Defendant Cooper did not take the stand in his own defense.

REASONS FOR THE ALLOWANCE OF THE WRIT

A. A Public Entity, The Office Of County Sheriff, Is Not An Enterprise Within The Meaning Of The RICO Statute.

The United States Court of Appeals for the Seventh Circuit has decided a Federal question which in our view is in conflict with the Congressional intent of the RICO statute. The issues squarely put is whether a public entity can be considered an enterprise under the statute.

Section 1961(4) of the Act defines enterprise as follows:

> "Enterprise" includes any individual, partnership, corporation, association, or other legal entity and any union or group of individuals associated in fact although not a legal entity."

* * * *

This Court has recently held and before it most of the circuits have held that an enterprise within the meaning of RICO includes illegal enterprises as well as legitimate ones. Specifically, the circuits have held that a Sheriff's department may be an enterprise and specifically the Seventh Circuit has held in *United States* v. *Grzywacz,* 603 F.2d 682 (1979), *cert. denied,* 446 U.S. 935 (1980) that a city police department may be an enterprise. In the instant cause, the Seventh Circuit has held that the Sheriff's Department is an enterprise.

This Honorable Court has recently determined that there is no restriction upon the associations embraced by the definition of the word enterprise. *United States* v. *Turkette,* 49 U.S.L.W. 4743, 4744 (June 17, 1981). This Court in examining the legislative history and the language of the statute emphatically rejected any narrow definition of the term enterprise. The Court stated that:

> The language of the statute, however, - the most reliable evidence of its intent-reveals that Congress opted for a far broader definition of the word "enterprise," and we are unconvinced by anything in the legislative history that this definition should be given anything less than its full effect. *United States* v. *Turkette,* 49 U.S.L.W. at 4746-47.

However, we suggest that this Court did not and has not as yet held that a public entity may be considered and should be considered an enterprise under the RICO Act. We suggest that this was not Congressional intent. Although Congress seems to have invited broad judicial interpretations by stating that RICO should be liberally construed to effect its remedial purposes (Organized Crime Control Act of 1970. Pub 1. No. 91-452, Section 904(a), 84 Stat. 947), we would suggest that if the liberal construction clause is considered applicable to determine the scope of criminal liability it should not be construed to allow a public entity to be considered an enterprise.

In *United States* v. *Anderson,* 626 F.2d 1358(8th Cir. 1980), the Court noted that the extent of judicial deference to be accorded that clause in construing RICO was unclear in view of the traditional rule of statutory construction requiring that criminal statutes be construed in favor of lenity. The Court in *Anderson, supra,* criticized the broad interpretations of RICO and said among other things that:

> "Broad interpretation and simplistic resolution of the complicated statutory language poses the danger of enhancing dispopularity beyond the intentions of Congress. . . ."

B. One Defendant's Complicity In One Type Of Unlawful Activity In The Conduct Of The Affairs Of An Enterprise Does Not Make Him Criminally Responsible Under RICO For Other And Distinct Types Of Unlawful Activity For Which He Has No Knowledge Or Responsibility.

There is no evidence that Stoller agreed in any way in the series of extortions and payoffs in which Maeras and Cooper and others had been involved. At best for the Government, there was evidence of two distinct agreements with Stoller and his company parties to only one of the agreements.

Therefore, Stoller and his company had suffered prejudice in being tried on a charge of a single conspiracy in RICO which embraced within the pattern a great many corrupt acts quite different from and more dramatic, colorful and obviously culpable than the nondisclosure in which Stoller and company may have been involved. Once it became evident that Stoller and his company were not accountable for the extortion and bribery, they were entitled to a severance and a separate trial possibly on a superceding indictment. The reliance of the Court below on *United States* v. *Elliott,* 571 F.2d 880, (5th Cir.) *cert. denied,* 439 U.S. 953 (1978), which held that a defendant's complicity in one type of unlawful activity in the conduct of the affairs of an enterprise can make him criminally responsible under RICO for other and distinct types of unlawful activity of which he has not knowledge or responsibility in fact, is misplaced. This significantly expands the reach of conspiracy prosecution. *Blumenthal* v. *United States,* 332 U.S. 539 (1947).

Assuming that Stoller and company could be convicted of conspiracy with Cooper and Maeras to conduct the affairs of the Sheriff's Department through a pattern of repeated acts of mail fraud and wire fraud, that pattern did not include the bribery, payoff and extortion episodes. The proof does not support the proposition that Stoller and company were part of the single conspiracy charge. The one RICO conspiracy encom-

passes two clearly separate and distinct criminal schemes. The only connection between the schemes was their inclusion in one illegal enterprise, the Madison Countys Sheriff's Office. If the evidence is to be believed, the evidence establishes two independent RICO conspiracies and the joinder of these crimes in one indictment is therefore improper. Fed.R.Crim.P.8. In *Kotteakos* v. *United States,* 328 U.S. 750 (1946), this Court held that the proof of multiple conspiracies under an indictment alleging a single conspiracy can constitute a material variance from the indictment and violates the rights of the defendants not to be tried en masse for the conglomeration of distinct and separate offenses allegedly committed by others. Although *Elliott, supra,* stated that an expansive interpretation of RICO's purpose holding that the interdependence previously required for independent conspiracies to become parts of a single chain conspiracy is no longer required, the linkage is supplied by the fact that each independent conspiracy is intended to further the affairs of the enterprise. However, the Association's kickback scheme which links Stoller and his company to the activities of Maeras was not intended to further the affairs of the Sheriff's Department which was the only enterprise alleged in the indictment. We suggest that the limits of *Elliott, supra,* have been exceeded in the cause at bar.

We suggest that even if the activities of the defendants constituted one RICO conspiracy as alleged in the indictment, Stoller and his company were clearly prejudiced by the failure of the District Court to grant a request for a severance. The payoff schemes involving prostitution and protection of which Stoller was indisputably ignorant involved evidence of illegal activities of a wholly different nature from the fundraising kickbacks. We suggest that the jury could not help but be influenced by evidence of these other offenses.

Further, the failure of the Court to sever Stoller and his company from the trial of Maeras and Cooper was irreputably pre-

judicial to Maeras and Cooper. It should be noted that the episodes pertaining to Maeras and Cooper pertaining to prostitution and payoffs from 1970 to 1973 would have been barred by the statute of limitations for separate prosecution at the time of the indictment.

Although RICO allows a ten-year interval between two acts of racketeering, the applicable statute of limitations for non-capital offenses is five years which runs from the date of the last alleged act of racketeering activity. In *United States* v. *Field,* 432 F.Supp. 55 (S.D.N.Y. 1977), aff'd mem. 578 F.2d 1371 (2nd Cir.,) *cert. dismissed,* 439 U.S. 801 (1978). Therefore, if Maeras and Cooper had been charged with conducting or conspiring from 1971 to early 1973, to conduct the affairs of the department through a pattern of racketeering activity, the statute of limitations would have barred the prosecution. We suggest that the hesitancy of the trial judge in failing to grant a severance and the Seventh Circuit's affirmance of the convictions might well have been tempered with the realization that if a severance would have been granted, no RICO conspiracy charge as to prostitution payoffs would have been possible by reason of the statute of limitations.

We would suggest that to allow the prosecution to plead in one indictment to two separate conspiracies not connected with one another in order to remove the prohibition of the statute of limitations is denying individuals their rights under due process of law and certainly was not the intent of Congress in the interpretations of the RICO conspiracy and judicial interpretation of same in determining the permissible limits of RICO.

CONCLUSION

For the foregoing reasons, the Petition for Writ of Certiorari should be granted.

Respectfully submitted,

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APPENDIX

APPENDIX

In The United States District Court
Southern District of Illinois
Southern Division

No. 78-50011

United States of America,
Plaintiff,

v.

Lee Stoller Enterprises, Inc., Lee Stoller,
and John M. Cooper,
Defendants.

JUDGMENT AND COMMITMENT ORDER

USA Gerald Fines and AUSA Thomas Turner present for Government. Defendants Cooper and Stoller present in court with Attorneys Carl Runge and Attorney Michael Costello. Arguments heard on defendants' post-trial motions. Motions denied. Defendant Stoller presents evidence in mitigation of his motion for probation. The court asked whether defendants had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that:

It is Adjudged that Defendant, Lee Stoller Enterprises shall pay a fine to the United States in the sum of Ten Thousand ($10,000.00) Dollars.

The defendant, Leland L. Stoller is hereby committed to the custody of the Attorney General of his authorized representative for imprisonment for a period of three (3) years on each count, to run concurrently, pursuant to Title 18, Section 4205(b)(2),

United States Code, which allows the defendant to become eligible for parole at any time the parole commission may determine.

The Defendant, John M. Cooper is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of fifteen (15) years on Ct. 1, five (5) years each on Cts. 2, 3 & 4 to run consecutive to each other and concurrent with Ct. 1; five (5) years each on Cts. 5, 6 & 7 to run consecutive to each other and concurrent with Ct. 1; five (5) years each on Cts. 8, 9 & 10 to run consecutive to each other and concurrent with Ct. 1; five (5) years each on Cts. 11, 12 & 13 to run consecutive to each other and concurrent with Ct. 1; five (5) years each on Cts. 14, 15 & 18 to run consecutive to each other and concurrent with Ct. 1; five (5) years each on Cts. 19, 20 & 21 to run consecutive to each other and concurrent with Ct. 1; five (5) years each on Cts. 22, 23 & 24 to run consecutive to each other and concurrent with Ct. 1; five (5) years on Ct. 25 to run concurrent with Ct. 1; making a total sentence of fifteen (15) years. Sentence pursuant to Title 18, Section 4205(b)(2), U.S.C., which allows the defendant to become eligible for parole at any time the parole commission may determine. Bonds continued pending appeal. (Ackerman, J.)

(Record, Docket Entry entered May 25, 1979.)

In The United States Court of Appeals
For the Seventh Circuit

Nos. 79-1632, 79-1633 and 80-1479

United States of America,
Plaintiff-Appellee,

v.

Lee Stoller Enterprises, Inc., Lee Stoller,
John M. Cooper and John Maeras,
Defendants-Appellants.

Appeals from the United States District Court for the
Southern District of Illinois, Alton Division.
No. 78 CR 50011—J. Waldo Ackerman, Judge.

Argued En Banc February 19, 1981—Decided June 30, 1981

Before Fairchild, Chief Judge, Swygert, Cummings, Pell, Sprecher, Bauer and Cudahy, Circuit Judges.*

Sprecher, Circuit Judge. This appeal, from convictions on multiple counts of an indictment, presents issues arising from prosecutions under the Racketeer Influenced and Corrupt Organizations Statute ("RICO"); particularly whether a public entity, such as here the office of County Sheriff, can be a RICO "enterprise".

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* Circuit Judge Harlington Wood, Jr., disqualified himself from participating in the consideration of this case.

I

The defendant John Maeras was the Sheriff of Madison County, Illinois, from December, 1970, to December, 1978. The defendant John M. Cooper was a deputy sheriff for this entire period and was serving as a lieutenant and chief of field operations in November, 1978, when the indictment was returned. These defendants were charged with involvement in two broad corruption schemes.

The first aspect of corruption involved payoffs for prostitution and towing activities. Shortly after his inauguration as sheriff, Maeras discussed with his brother-in-law Pete Skundrich and his friend Ron Grzywacz[1] kickbacks which he knew deputies were receiving from towing companies and houses of prostitution within the county. He told them that he wanted the payoffs stopped and that any money should go to him and not the deputies. After a few days, Grzywacz and Skundrich agreed to visit various places on behalf of the sheriff and inform them that the payoffs were henceforth to be delivered to Grzywacz collecting for the sheriff and that no further payments were to be made to the deputies.

After the first such visit—to Trickey's Towing in Wood River, Illinois—Skundrich was replaced by defendant Cooper who Maeras and Grzywacz felt would be more tactful. Altogether, Cooper and Grzywacz visited eleven establishments. In each case, they informed the owner that the sheriff wanted all further payments to be made to him, and they negotiated with the owner

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[1] Grzywacz was one of the defendants in a previous RICO case decided by this court. *United States* v. *Grzywacz*, 603 F.2d 682 (7th Cir. 1979), *cert denied*, 446 U.S. 935 (1980). That case concerned the City of Madison Police Department, not the county sheriff's office, but otherwise the facts were closely related to the events here. Much testimony was admitted in that case regarding Grzywacz's activities at the county level. Grzywacz testified as a prosecution witness in the trial in this case.

regarding the price per prostitute (normally fifty dollars per week) or per tow (six dollars each). Grzywacz arranged to make weekly pickups. Six of the owners agreed, but five refused for various reasons. One owner of a lounge engaged in prostitution, for example, said that he did not have to pay them "because he was taking care of a judge in Madison County." Another pointed out that while his bar was located in Madison County his motel rooms were in the rear of the bar, across the county line in St. Clair County.

The plan began to disintegrate in December, 1971, when a sergeant in the Sheriff's Office, who was unaware of the payoff scheme, led a raid on Myrene's Steakhouse, one of the principal contributors. Shortly thereafter, Maeras called in the sergeant and asked why he had not informed his superiors prior to the raid. The sergeant promised to inform Maeras in advance of any possible future raids. Cooper continued to make pickups at Myrene's until May, 1972, when another raid—this one conducted by two assistant State's Attorneys—closed the establishment down again. Maeras was again informed of this raid only after it took place.

Meanwhile, Maeras and Cooper had arranged to transfer to a remote area of the county another deputy in the department who was causing problems for Club J, another house of prostitution involved in the scheme. Payments totalling approximately $10,000 were made by Club J until January, 1973, when the club was raided by the Illinois State Police. The Madison County Sheriff's Office was notified of the raid only on the day it took place; the organizer of the raid was opposed to even that late notice. The owners of the club telephoned Grzywacz during the raid to learn why they were being raided. Grzywacz explained later the Maeras had been out of town when the search warrant had been prepared and filed. Club J did not reopen for more than a year, when it did so under the name of a new owner. It was raided shortly thereafter by Sheriff's deputies led by Deputy Gary Lee Burns.

The Internal Revenue Service began an investigation in early 1974 of Grzywacz's tax liabilities for 1970, 1971, and 1972, the years during which he was receiving the payoffs. Grzywacz, Cooper, and Maeras discussed the situation and developed a story to tell the IRS that the two deputies had been conducting an investigation for Maeras. Grzywacz was to say that the investigation was supervised by Captain Demos Nicholas of the Sheriff's Office, since Nicholas had died before them. He was also to claim that the investigation had discovered that a former deputy named Dilly Connors was receiving payoffs. After Maeras had signed a letter authorizing Grzywacz to speak to the IRS and referring to "an investigation performed by him for me, concerning suspected unlawful operations in Madison County," Grzywacz told the story as prepared to the IRS. Cooper and Maeras were both later interviewed under oath and repeated the same story. By early 1975, the IRS declared that Grzywacz owed $6,000 in interest and penalties for money collected from the Club J and others. Grzywacz paid the $6,000, but in September, 1977, even though Cooper and Maeras had discontinued all contacts with him, he told the investigation story to a federal grand jury. He was indicted and convicted on charges of perjury and racketeering.[2]

In addition to the towing and prostitution payoffs, a second aspect of corruption of Sheriff Maeras and Deputy Cooper involved the Madison County Deputy Sheriffs' Association ("DSA"), which had been formed in 1970 as a bargaining unit for the deputies. Shortly after DSA's formation, the deputies joined another union; DSA, which had one hundred percent membership, became a social and charitable organization. Defendant Cooper was the president at that time, and Gary Lee Burns was secretary. In 1971, at the urging of Cooper, DSA contracted with the defendant Leland L. Stoller to organize and

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[2] This court affirmed that conviction in *United States* v. *Grzywacz*, *supra* note 1.

promote a "Sheriff's Dance" to raise money for DSA. Stoller paid his own solicitation expenses and received 75% of the money collected; DSA received the other 25%. The first dance, held in February 1972, was a success and raised thousands of dollars for DSA.

Sheriff Maeras discussed Stoller and his fund-raising activities with Cooper and Burns a month or so later. He asked them, "What's in it for old John?" Cooper answered that he would work something out with Stoller. When Stoller next returned to Madison County a few months later, Cooper and Burns met. Cooper explained to Stoller what a powerful man Maeras was in Madison County and that without his approval, any fund-raising activity would be doomed. Stoller objected at first, but they soon reached an agreement by which Stoller was to pay ten percent to Maeras of the gross money collected. Stoller, the defendant Lee Stoller enterprises, and DSA then executed a contract for further fund-raising activities, but that contract did not mention that any money would go to Maeras.

A second dance was held in September, 1972, and more were to follow. Stoller delivered cash to Cooper and Burns, and they passed it along to Maeras at his office. After a few deliveries, however, the two deputies decided that Maeras should not get all the money while they took all the risks, so they began to skim some money off the top of the first skim and keep it for themselves. Stoller paid Maeras approximately $10,000 to $12,000; Cooper and Burns kept about $3,000 each for their efforts.

Trouble began to develop for this scheme when Burns, who had replaced Cooper as president of DSA, was succeeded by John Slotta in May, 1975. The new management of the association noticed that the books kept by Cooper and Burns were incomplete and that DSA had accounted only for a small portion of the money raised by Stoller. They also noted that checks had

been made payable to 006 Detective Agency from the DSA account; the two owners of the agency were Cooper and Stoller. The new officers confronted Stoller, who could not explain the discrepancies. He reimbursed DSA $650 for some of the unauthorized expenditures. Nevertheless, DSA terminated all business with Stoller about December 1, 1975. DSA was disbanded in August, 1976.

III

On November 29, 1978, a federal grand jury indicted John Maeras, John M. Cooper, Leland L. Stoller, and Lee Stoller Enterprises, Inc. for conspiracy to violate RICO.[3] All defendants were also charged with fourteen counts of mail fraud, 18 U.S.C. § 1341, and six counts of wire fraud, 18 U.S.C. § 1343. Four counts charged defendants Maeras and Cooper with making or inducing false statements within the jurisdiction of the Internal Revenue Service, 18 U.S.C. § 1001. One final count charged Maeras and Cooper with obstructing justice by persuading Gary Lee Burns to testify falsely before a grand jury, 18 U.S.C. §1503. On February 25, 1979, after a two-week jury trial, the jury found defendants guilty on all but three counts.[4] The district court denied the defendants' post-trial motion and, on May 25, 1979, sentenced Cooper to a total of fifteen years and Stoller to three years of imprisonment. Lee Stoller Enterprises, Inc. was fined $10,000. Maeras was later sentenced to a total of fifteen years imprisonment as well.

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[3] The statute, 18 U.S.C. §§1961-68, was enacted as Title IX of the Organized Crime Control Act of 1970. Specifically, defendants were charged with a violation of section 1962(d), a conspiracy to violate RICO.

[4] At the close of the Government's case, the trial court had dismissed two wire fraud counts and the obstruction of justice count.

After the appeal was argued before a panel of this court but prior to a decision, the judges in regular active service voted to hear the appeal en banc because of the importance of the issue of whether a public entity may be a RICO "enterprise".

III

The defendants' principal contention is that the RICO statute may not properly be applied to them because the Madison County Sheriff's Office is not an "enterprise" within the meaning of the RICO statute. The evidence against the defendants relates to two series of actions. The first was a scheme to extort payoffs from houses of prostitution and towing companies within Madison County, Illinois. The other involved skimming funds from contributions to the Madison County Deputy Sheriffs' Association. The connection between these two series of events was their inclusion in one illegal "enterprise": namely, the Madison County Sheriff's Office. The question whether RICO was properly applied to the sheriff's office as an "enterprise" is thus crucial to the outcome of this case.

RICO was enacted as Title IX of the Organized Crime Control Act of 1970, an eleven-title attack on organized crime. Section 1962 of RICO makes it a federal offense (1) to receive or use income from "racketeering activity" or "collection of an unlawful debt" to acquire an interest in or establish an enterprise engaged in interstate commerce; (2) to acquire through a "pattern of racketeering activity" or collection of unlawful debt any control of an enterprise engaged in interstate commerce; or (3) to participate in the conduct of any enterprise engaged in interstate commerce through a pattern of racketeering activity or collection of unlawful debt. 18 U.S.C. § 1962.[3]

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[3]A " 'pattern of racketeering activity' requires at least two acts of racketeering activity, one of which occurred after the effective date of this chapter and the last of which occurred within ten years (excluding any period of imprisonment) after the commission of a prior act of racketeering activity." 18 U.S.C. § 1961(5).

RICO is one part of the Organized Crime Control Act, which is, as the Supreme Court has noted, "a carefully crafted piece of legislation." *Iannelli* v. *United States,* 420 U.S. 770, 789 (1975). At the outset of the Act, Congress forcefully expressed its desire to eradicate organized crime and corruption. The Act's Statement of Findings and Purpose declares:

> (1) organized crime in the United States is a highly sophisticated, diversified, and widespread activity that annually drains billions of dollars from America's economy by unlawful conduct and the illegal use of force, fraud, and *corruption;* . . .
>
> (3) this money and power are increasingly used to . . . *subvert and corrupt our democratic processes;*
>
> (4) organized crime activities in the United States . . . *undermine the general welfare of the Nation and its citizens;* . . . .

Pub. L. No. 91-452 § i (emphasis added).

It is generally well-known that one of the primary tools in the hands of organized crime is the corruption of public officials and the subversion and undermining of public agencies. Congress used as strong language as it could muster to declare war on crime and the use of those tools—corruption, subversion and undermining of public officials.[6] With these purposes in mind, the broad scope of 18 U.S.C. § 1962(c) is easily understood:

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[6]The dictionary definition of "corruption" includes "inducement (as of a political official) by means of improper considerations (as bribery) to commit a violation of duty (the corruption of officials by gambling bosses) (exposing corruption in city politics). . . ." A dictionary example of "subvert" is "tear down our free institutions and subvert our form of government into a tyranny." Webster's Third New International Dictionary (1966).

> It shall be unlawful for any person employed by or associated with *any enterprise* engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt.

(Emphasis added.)

Section 1961(4) of the Act defines enterprise:

> "enterprise" includes *any* individual, partnership, corporation, association, or other legal entity, and *any* union or group of individuals associated in fact although not a legal entity; . . . .

(Emphasis added.)

The word "any", here used three times, has a comprehensive meaning of "all or every." *Kalmbach, Inc.* v. *Ins. Co. of State of Pennsylvania,* 529 F.2d 552, 556 (9th Cir. 1976). This language is strong and plain. In a case involving the interpretation of "any other immoral purpose," the Supreme Court said, in *Caminetti* v. *United States,* 242 U.S. 470, 485 (1917):

> It is elementary that the meaning of a statute must, in the first instance, be sought in the language in which the act is framed, and if that is plain, and if the law is within the constitutional authority of the law-making body which passed it, the sole function of the courts is to enforce it according to its terms . . . .
>
> Where the language is plain and admits of no more than one meaning the duty of interpretation does not arise and the rules which are to aid doubtful meaning need no discussion.

(Citations omitted).

Congress specifically directed that RICO "shall be liberally construed to effectuate its remedial purposes." Pub. L. No. 91-452, Title IX, § 904, 84 Stat. 941 (1970). *United States* v. *Forsythe*, 560 F.2d 1127, 1135-36 (3d Cir. 1977); *United States* v. *Parness*, 503 F.2d 430, 439 (2d Cir. 1974), *cert. denied*, 419 U.S. 1105 (1975). *Cf. United States* v. *Cappetto*, 502 F.2d 1351, 1358 (7th Cir. 1974), *cert. denied*, 420 U.S. 925 (1975). The statute is so broad that it applies to foreign enterprises as well as to domestic ones, *Parness*, 503 F.2d at 438-40, and to small enterprises as well as to large ones, *United States* v. *Campanale*, 518 F.2d 352, 364 (9th Cir. 1975), *cert denied sub nom. Matthews* v. *United States*, 423 U.S. 1050 (1976).

Very recently, the Supreme Court has held,[7] and before it most of the circuits have held,[8] that an "enterprise" within the meaning of RICO includes illegal enterprises as well as legitimate ones.

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[7] *United States* v. *Turkette*, 49 U.S.L.W. 4743 (June 17, 1981).

[8] Second Circuit: *United States* v. *Errico*, 635 F.2d 152, 155 (2d Cir. 1980); *United States* v. *Mannino*, 635 F.2d 110, 117-18 (2d Cir. 1980); and *United States* v. *Altese*, 542 F.2d 104, 106-07 (2d Cir. 1976), *cert. denied sub nom. Napoli* v. *United States*, 429 U.S. 1039 (1977).

Third Circuit: *United States* v. *Provenzano*, 620 F.2d 985, 992-93 (3d Cir.), *cert. denied*, 101 S.Ct. 267 (1980); *United States* v. *Manchester*, 605 F.2d 1198 (3d Cir. 1979), *cert. denied*, 445 U.S. 945 (1980) (affirming district court without opinion).

Fourth Circuit: *United States* v. *Whitehead*, 618 F.2d 523, 525 n.1 (4th Cir. 1980).

Fifth Circuit: *United States* v. *Diecidue*, 603 F.2d 535, 545 (5th Cir. 1979), *cert. denied sub nom. Antone* v. *United States*, 445 U.S. 946 (1980); *United States* v. *Malatesta*, 583 F.2d 748, 754 n.3 (5th Cir. 1978), modified en banc on other grounds, 590 F.2d 1379 (1979), *cert. denied sub nom. Bertolotti* v. *United States*, 440 U.S. 962 (1979); *United States* v. *Elliott*, 571 F.2d 880, 897-98 (5th Cir. 1978), *cert. denied sub nom. Delph* v. *United States*, 439 U.S. 953 (1978); *United States* v. *McLaurin*, 557 F.2d 1064, 1072-73 (5th Cir. 1977), *cert. denied sub nom. Hamilton* v. *United States*, 434 U.S. 1020 (1978); *United States* v. *Morris*, 532 F.2d 436, 441-42 (5th Cir. 1976); and *United States* v. *Hawes*, 529 F.2d 472, 479 (5th Cir. 1976).

In concluding that the term "enterprise" encompasses both legitimate and illegitimate enterprises, the Supreme Court said, "[t]here is no restriction upon the associations embraced by the definition" of the word "enterprise". *United States* v. *Turkette*, 49 U.S.L.W. 4743, 4744 (June 17, 1981). The Court, examining the legislative history and the language of the statute, emphatically rejected any narrow definition of the term "enterprise":

> Considering . . . [the] statement of the Act's broad purposes, the construction of RICO suggested by respondent and the court below is unacceptable. . . . In view of the purposes and goals of the Act, as well as the language of the statute, we are unpersuaded that Congress nevertheless confined the reach of the law to only narrow aspects of organized crime. . . .
>
> . . . .
>
> The language of the statute, however,—the most reliable evidence of its intent—reveals that Congress opted for a far broader definition of the word "enterprise," and we

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Sixth Circuit: *United States* v. *Sutton*, 642 F.2d 1001 (6th Cir. 1980) (en banc affirmance of convictions reversed in 605 F.2d 260 (1979)).

Seventh Circuit: *United States* v. *Aleman*, 609 F.2d 298, 303-05 (7th Cir. 1979), *cert. denied*, 445 U.S. 946 (1980); and *United States* v. *Cappetto*, 502 F.2d 1351, 1358 (7th Cir. 1974), *cert. denied*, 420 U.S. 925 (1975).

Ninth Circuit: *United States* v. *Zemek*, 634 F.2d 1159, 1166-67 (9th Cir. 1980); and *United States* v. *Rone*, 598 F.2d 564, 568-69 (9th Cir. 1979), *cert. denied sub nom. Little* v. *United States*, 445 U.S. 946 (1980).

District of Columbia Circuit: *United States* v. *Swiderski*, 593 F.2d 1246, 1248-49 (D.C.Cir. 1978), *cert. denied sub nom. McGowan* v. *United States*, 441 U.S. 933 (1979) (dictum; enterprise was part legitimate and part illegitimate).

> are unconvinced by anything in the legislative history that this definition should be given anything less than its full effect.

United States v. *Turkette*, 49 U.S.L.W. at 4746-47, 4747.

Finally, several circuits including our own have held that "enterprise" encompasses public bodies and entities as well as private entities.[9] As we concluded in *Grzywacz*, 603 F.2d at 687, consideration of the purpose of the Organized Crime Control Act, the plain words of the RICO statute, and the volume of past precedent leads us to conclude here again that a public entity may constitute an "enterprise" within the meaning of RICO.[10] Specifically, we find the office of Madison County Sheriff is such an enterprise.

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[9]Third Circuit: *United States* v. *Bacheler*, 611 F.2d 443, 450 (3d Cir. 1979) (Philadelphia Traffic Court); *United States* v. *Frumento*, 563 F.2d 1083, 1089-92 (3d Cir. 1977), *cert. denied sub nom. Millhouse* v. *United States*, 434 U.S. 1072 (1978) (Pennsylvania Bureau of Cigarette and Beverage TAxes). *See also*, *United States* v. *Herman*, 589 F.2d 1191 (3d Cir. 1978), *cert. denied*, 441 U.S. 913 (1979) (applied RICO to Pittsburgh magistrates without discussion); and *United States* v. *Vignola*, 464 F.Supp. 1091, 1095-96 (E.D.Pa. 1979), *aff'd mem.*, 605 F.2d 1199 (3d Cir. 1979), *cert. denied*, 444 U.S. 1072 (1980) (Philadelphia Traffic Court).

Fourth Circuit: *United States* v. *Altomare*, 625 F.2d 7 (4th Cir. 1980) (County Prosecuting Attorney); *United States* v. *Karas*, 624 F.2d 500, 504 (4th Cir. 1980) (County Prosecuting Attorney); *United States* v. *Baker*, 617 F.2d 1060, 1061 (4th Cir. 1980) (County Sheriff).

Fifth Circuit: *United States* v. *Bright*, 630 F.2d 804, 829 (5th Cir. 1980) (County Sheriff); *United States* v. *Brown*, 555 F.2d 407, 415-16 (5th Cir. 1977), *cert. denied*, 435 U.S. 904 (1978) (City Police Department).

Seventh Circuit: *United States* v. *Grzywacz*, 603 F.2d 682, 685-87 (7th Cir. 1979), *cert. denied*, 446 U.S. 935 (1980) (City Police Department).

[10]G. Robert Blakey, chief counsel of the Senate Subcommittee on Criminal Laws and Procedures in 1969-70, when the Organized Crime

IV

The defendants contend that the trial court erred in denying their motions for severance of their respective trials. The question of whether charges should be severed for trial is for the discretion of the trial judge, whose decision will be reversed only upon a showing of clear abuse. *United States* v. *McPartlin,* 595 F.2d 1321, 1333 (7th Cir.), *cert. denied,* 444 U.S. 33 (1979).

Defendants here, as in most RICO cases, were alleged to have committed different predicate crimes. But in a trial on RICO charges, a particular defendant may be the victim of spillover testimony regarding other, more violent or heinous, predicate crimes. This can happen because the specific purpose of the substantive provisions of RICO is to tie together diverse parties and crimes. Under RICO, it is irrelevant that each defendant participated in the enterprise's affairs through different and unrelated crimes. *United States* v. *Elliott,* 571 F.2d 880, 902 (5th Cir.), *cert. denied sub nom. Delph* v. *United States,* 439 U.S. 953 (1978).

Control Act was passed, generally credited with being the author of the Act, supports the broad reading of RICO. *See* Tybor, *Racketeering Law Facing Key Test,* 3 Nat'l L.J. 1, 19 (Dec. 29, 1980); Blakey and Gettings, *RICO's Problem in the Courts: A Classic Case of Misreading,* 3 Nat'l L.J. 26 (March 9, 1981).

In *United States* v. *Gillock,* 587 F.2d 284, 303 (6th Cir. 1978), *rev'd on other grounds,* 445 U.S. 360 (1980), it appears that the RICO "enterprise" involved was the Tennessee General Assembly. This fact was not involved in the Supreme Court's review of the case, but the Court observed:

> Of course, even a Member of Congress would not be immune under the Federal Speech or Debate Clause from prosecution for the acts which form the basis of the . . . RICO, 18 U.S.C. § 1962, charges here.

United States v. *Gillock,* 445 U.S. 360, 373 n.11 (1980).

The trial court adequately protected each defendant's rights by instructing the jury that it should consider the evidence separately as to each defendant and each count. Tr. 2263. *United States* v. *LeCompte,* 599 F.2d 81, 82-83 (5th Cir. 1979), *cert. denied* 445 U.S. 927 (1980). Although the defendants used different means, they were alleged to have participated in the same offense: furtherance of the enterprise. Therefore, severance was not required. *United States* v. *Bright,* 630 F.2d 804, 812-13 (5th Cir. 1980).

Closely allied to the severance argument is the defendants' claim that the trial court erred in admitting into evidence out-of-court statements of co-conspirators in furtherance of the conspiracy and admissions by defendants. The defendants have not specified the particular statements or admissions to which they object. The trial judge employed the pre-*Santiago* method of admission, *see United States* v. *Santiago,* 582 F.2d 1128, 1131 (7th Cir. 1978): conditional admission with cautionary instructions. Tr. 159-60, 649-50. The judge followed up on the conditional admission by issuing the customary pre-*Santiago* conspiracy instruction limiting the jury's consideration of the declarations of co-conspirators. Tr. 2290-93. Inasmuch as the pr-*Santiago* method required the jury to find that a conspiracy existed beyond a reasonable doubt while the *Santiago* method requires the judge to make that determination by using a less rigid preponderance test, and inasmuch as the present trial was conducted only months after *Santiago,* which did not totally condemn the former practice, the defendants' blanket objection is not well taken. In regard to admissions by the defendants, cautionary instructions were given as the testimony was received, Tr. 1307, 1328-29, and again in the final instructions, Tr. 2293.

V

The defendants argue that the verdicts were against the manifest weight of the evidence. Viewed in the light most favorable to the government, *Glasser* v. *United States*, 315 U.S. 60, 80 (1942), the evidence of the guilt of Maeras and Cooper was overwhelming. The testimony of Gary Lee Burns and Ronald Grzywacz constituted direct evidence of the participation by the defendants in the Department's pattern of racketeering activity. Although Stoller did not participate in the towing and prostitution payoffs, there was substantial direct evidence of his involvement in the bribery of the Sheriff and his deputies.

We reject Stoller's contention that he was a victim of the extortionate acts underlying the mail and wire fraud charges, and that he could therefore not be prosecuted as a participant. We find his position indistinguishable from that of the defendant supplier in *United States* v. *George*, 477 F.2d 508 (7th Cir.), *cert. denied sub nom. Greensphan* v. *United States*, 414 U.S. 827 (1973). In that case, the defendant supplier's kickbacks made him a participant in the scheme to defraud, since he thereby gained a monopolistic position in supplying his cabinets to Zenith, the defrauded party. Similarly, here Stoller was able to maintain his position as sole agent for DSA, and he profited from his position handsomely.

Stoller's involvement in the RICO enterprise itself was substantial; he agreed to pay 10% of the gross Money solicited for DSA to the Sheriff, who eventually received $10,000 to $12,000; defendant Cooper and another deputy each received about $3,000. This money was paid so that Stoller could maintain a monopoly on the lucrative Sheriff-connected solicitations. Seven dances were solicited in five years; other solicitations were made for ad books and decals. The Sheriff received numerous complaints about the nature of the solicitations and without the bribery, the solicitations would undoubtedly not have continued. In addition to paying off Maeras through

Cooper and Burns, Stoller entered into the "006 Detective Agency" with Cooper, through which Stoller, within something less than a year, paid to Cooper several thousand dollars. Also, some 006 expenses were paid out of DSA contributions. Cooper, in return, used his influence as a deputy sheriff to promote Stoller's solicitation activities with other sheriff departments throughout the country. Stoller made use of a letter on the letterhead of "John Maeras, Sheriff of Madison County," signed by "Lt. John Cooper, Madison County Sheriff Department," and addressed "To Whom It May Concern," saying:

> Stoller enterprises of Peoria, Illinois is presently conducting a sales program to obtain sponsors for our 2nd Annual Sheriff's Dance to be held on Fri, Sat, & Sun Dec. 15, 16 & 17 1972.
>
> Our Deputy Sheriff's Assn. has again retained Stoller Enterprises because of the outstanding job the firm did last year in soliciting Ads for our year book.
>
> The Cristy Lane Show brought the largest gathering of people together (for our dance) in the history of Madison County, Illinois. This would include, of course, all political functions.
>
> I am sure that the professional ethics of Stoller Enterprises would be of great value to any Police Agency wishing to raise funds for any cause.

Gov't. Ex. 50.

An analogous situation occurred in *United States* v. *Bright*, 630 F.2d 804 (5th Cir. 1980), where Bright's sole participation in the sheriff's "enterprise" took the form of bribery of the sheriff so that Bright could operate his bail bonding business as a monopoly. The Fifth Circuit held that "there was sufficient evidence from which a jury could find that Bright participated in the affairs of the Sheriff's office by bribing the Sheriff." 630 F.2d at 831; *see also id.* at 829-31.

We conclude that the verdicts were supported by substantial evidence as to each defendant.

VI

Having examined the record, we find that the defendants' remaining arguments are without merit.

For the foregoing reasons, the judgments of conviction are

AFFIRMED.

FAIRCHILD, *Chief Judge,* dissenting in part.

Defendants sought dismissal of Count 1 of the Indictment on the ground that the Sheriff's Department is not an "enterprise" under RICO, and that Count 1 therefore did not state an offense.

I agree with the majority that a sheriff's department is an "enterprise." Accordingly, 18 U.S.C. § 1962(c) makes it unlawful for a person employed by or associated with a sheriff's department whose activities affect interstate commerce to conduct or participate in the conduct of the department's affairs through a pattern of racketeering activity. Section 1962(d) makes it unlawful to conspire to violate subsection (c). Count 1 charged Maeras (the Sheriff), Cooper (a Deputy Sheriff), Stoller, and his corporation with so conspiring from January 1, 1971 to November 29, 1978.

I agree there was no error in denying the motion to dismiss Count 1.

II

I do have a problem, however, with the proof of Count 1. There was no evidence that Stoller agreed in any way to the series of extortions in which Maeras and Cooper (and others) had been involved. At best for the government, there was evidence of two distinct agreements, with Stoller and his company parties to only one of them.

It is clear enough that the series of extortions and bribes related to the conduct of affairs of the Sheriff's Department. In return for the money, the Sheriff and his deputies agreed to refrain from enforcing the law. Bribery and extortion constitute racketeering activity under § 1961(1) and two or more instances could be deemed a pattern of racketeering activity under § 1961(5). Maeras and Cooper, accordingly, could have been found guilty of conspiracy to conduct the affairs of the Depart-

ment through a pattern of racketeering activity. It should be noted, however, that these episodes occurred from 1970 to 1973, and separate prosecution for that pattern of activity would have been barred by the statute of limitations at the time of the indictment.

Stoller's activity was carried on from 1971 to 1975. It consisted of fund raising for the Deputy Sheriff's Association. Although that type of activity has often been criticized for its sinister implications, there is no claim or proof in this case that contributions to the Association bought favors from the Sheriff's Department or otherwise affected the conduct of the Department's affairs. There was evidence, however, that after mid-1972 Stoller agreed with Maeras, through Cooper, that a portion of the contributions obtained would be paid to Maeras. This diversion of funds was not disclosed to the Association members or contributors, and the theory of the mail fraud convictions was that the members and contributors were thus defrauded. There was evidence, although disputed, that the diversions of money occurred, and thus there was support for the mail fraud and wire fraud convictions.

Stoller was induced to pay Sheriff Maeras by Cooper's and Burns' assertion that because Maeras knew everybody and was powerful in the county, fund raising would be doomed if it did not have his approval. Acts of mail fraud and wire fraud are racketeering activity under § 1961(1), and two acts constitute a pattern under §1961(5), but it is not so clear that the Sheriff's receipt of money in return for tacit approval of legitimate fund raising activity constitutes the conduct of the affairs of the Sheriff's Department. I would not, however, hold as a matter of law that it did not. So assuming, Stoller could be convicted of conspiracy with Cooper and Maeras to conduct the affairs of the Sheriff's Department through a pattern of repeated acts of mail fraud, but that pattern did not include the bribery and extortion episodes.

I disagree with the holding in *United States* v. *Elliott*, 571 F.2d 880, 902 (5th Cir.), *cert. denied*, 439 U.S. 953 (1978), relied on by the majority, that a defendant's complicity in one type of unlawful activity in the conduct of the affairs of an enterprise can make him criminally responsible under RICO for other and distinct types of unlawful activity of which he has no knowledge or responsibility in fact. Such a conclusion, applied to the facts of this case, significantly expands the reach of conspiracy prosecutions. *See Blumenthal* v. *United States*, 332 U.S. 539, 558 (1947).

If Maeras and Cooper had been charged with conducting or conspiring from 1971 to early 1973 to conduct the affairs of the Department through a pattern of racketeering activity, the statute of limitations would have barred the prosecution. Assuming again, however, that the Sheriff's receipt of a portion of the contributions to the Association constitutes the conduct of the affairs of the Sheriff's Department, Maeras and Cooper might have been charged, and convicted on the present evidence, of conspiracy from 1971 to 1975 to conduct the affairs of the Sheriff's Department through a pattern of racketeering activity consisting of *both* the extortion conduct and the mail fraud conduct. Probably the trial on a charge of a single conspiracy with Stoller and his company has not been unfair to Maeras and Cooper, even though the proof does not support the proposition that Stoller and his company were part of the single conspiracy charged.

It seems to me, however, that Stoller and his company have suffered prejudice in being tried on a charge of a single conspiracy which embraced within the "pattern" a great many corrupt acts quite different from and more dramatic, colorful, and obviously culpable than the non-disclosure in which they may have been involved. Once it became evident that Stoller and his company were not accountable for the extortion and bribery, they may have been entitled to severance and a separate trial,

probably on a superceding indictment confining the conspiracy count to the mail and wire fraud allegations. If not entitled to severance, they were at least entitled to instructions that would have limited the proof to be considered against them. *Cf. Kotteakos* v. *United States,* 328 U.S. 750 (1946).

SWYGERT, *Circuit Judge,* dissenting. Although I originally voted to reverse these convictions on the ground that the RICO statute could not be applied to public entities,[1] because of the Supreme Court's decision in *United States* v. *Turkette,* 49 U.S.L.W. 4743 (June 17, 1981), I am compelled to vote with the majority on the RICO issue. I join, however, in the dissents filed by Chief Judge Fairchild and Judge Cudahy on the issues of joinder and severance.

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[1] *See* my dissent in *United States* v. *Grzywacz,* 603 F.2d 682, 690 (7th Cir. 1979), *cert. denied,* 446 U.S. 935 (1980).

Cudahy, *Circuit Judge,* dissenting:

The indictment in the instant case charged one RICO conspiracy encompassing two clearly separate and distinct criminal schemes. The only connection between the schemes was "their inclusion in one illegal 'enterprise':[1] namely, the Madison County Sheriff's Office." Maj. Op. at 7. I believe, however, that the evidence here established two independent RICO conspiracies, *see* Chief Judge Fairchild's dissent at 17, 18 and the joinder of those crimes in one indictment was therefore improper. Fed. R. Crim. P. 8.[2] *See also United States* v. *Turkette,* 632 F.2d 896, 906-10 (1st Cir. 1980), *rev'd on other grounds,* 49 U.S.L.W. 4743 (S.Ct. June 17, 1981). Reversal is thus required under *Kotteakos* v. *United States,* 328 U.S. 750 (1946), which held that proof of multiple conspiracies under an indictment alleging a single conspiracy can constitute a material variance from the indictment and violate the rights of the defendants not to be tried *"en masse* for the conglomeration of distinct and separate offenses committed by others. . . ." *Kotteakos,* 328 U.S. at 775.

Unlike the majority, I do not agree that RICO has modified the established law of conspiracy in such a way as to sustain the indictment under the particular facts and allegations of this case. Thus, *United States* v. *Elliott,* 571 F.2d 880 (5th Cir.), *cert. denied,* 439 U.S. 953 (1978), relied upon an expansive in-

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[1] Although I had perceived certain difficulties in treating a sheriff's office as a RICO "enterprise" before the recent decision of the Supreme Court in *United States* v. *Turkette,* 49 U.S.L.W. 4743 (S. Ct. June 17, 1981), I think the general thrust of *Turkette* strongly suggests that a sheriff's office can be such an "enterprise." I therefore join Part III of the Majority Opinion.

[2] Because the events relating to the payoff scheme occurred from 1970 to 1973, any attempt to prosecute that particular RICO conspiracy is barred by the statute of limitations.

terpretation of RICO's purpose to hold that the interdependence, previously required for independent conspiracies to become parts of a single "chain" conspiracy, was no longer required under RICO. Under RICO, this linkage is supplied by the fact that each independent conspiracy was intended to further the affairs of the "enterprise." *Elliott,* 571 F.2d at 902-03. But here, the Deputy Sheriffs' Association kickback scheme which liked Stoller and Stoller Enterprises to the activities of Sheriff Maeras was not intended to further the affairs of the Madison County Sheriff's Department, the only "enterprise" alleged in this indictment. *Cf. United States* v. *Webster,* 639 F.2d 174, 183-86 (4th Cir. 1981). Even under the position taken by the Fifth Circuit in *Elliott,*[1] RICO has its limits, and those limits have been exceeded in the instant case.

Even if the activities of the defendants constituted one RICO conspiracy as alleged in the indictment, Stoller and Stoller Enterprises were clearly prejudiced by the failure of the district court to grant their request for a severance. The payoff schemes, of which Stoller was undisputably ignorant, involved evidence of illegal activities of a wholly different nature from the Deputy Sheriffs' Association fund-raising kickbacks. The jury could not help but be influenced by the evidence of these other apparently flagrant offenses.

I respectfully dissent to the extent indicated.

A true Copy:

Teste:

Clerk of the United States Court
of Appeals for the Seventh Circuit

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[1] I, like Chief Judge Fairchild, have my doubts about whether *Elliott* was correct in its broad revamping of the law of conspiracy for RICO prosecutions. Fairchild, C.J., dissenting, *infra* at 18-19. *See also United States* v. *Zemek,* 634 F.2d 1159, 1169 n.12 (9th Cir. 1980), *cert. denied,* 101 S.Ct. 1359 (1981).

Opposition

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No. 81-396

In the Supreme Court of the United States

OCTOBER TERM, 1981

LEE STOLLER ENTERPRISES, INC., ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether the office of a county sheriff constitutes an "enterprise" within the meaning of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. 1961(4).

2. Whether the evidence at trial showed that petitioners were engaged in multiple conspiracies rather than a single conspiracy as charged, and whether the trial court properly denied petitioners' severance motions.

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OPINION BELOW

The opinion of the court of appeals (Pet. App. A3-A25) is reported at 652 F. 2d 1313.

JURISDICTION

The judgment of the court of appeals sitting en banc was entered on June 30, 1981. The petition for a writ of certiorari was filed on August 28, 1981. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

After a jury trial in the United States District Court for the Central District of Illinois, petitioners were convicted of conspiring to participate in the affairs of an enterprise through a pattern of racketeering activity, in violation of 18 U.S.C. 1962(d), and on 18 counts of mail and wire fraud, in violation of 18 U.S.C. 1341 and 1343. Petitioners Maeras and Cooper were also convicted on four counts of making

and causing to be made false statements to the Internal Revenue Service, in violation of 18 U.S.C. 1001. Petitioner Stoller was sentenced to three years' imprisonment, and Lee Stoller Enterprises, Inc., was fined $10,000. Petitioners Cooper and Maeras were each sentenced to a total of 15 years' imprisonment. The court of appeals sitting en banc affirmed, with three judges dissenting (Pet. App. A3-A19).

The evidence established that during the conspiratorial period petitioner Maeras was the sheriff of Madison County, Illinois and petitioner Cooper was a deputy sheriff. Shortly after his inauguration as sheriff in December 1970, petitioner Maeras instructed his brother-in-law Pete Skundrich, his friend Ron Gryzwacz, and petitioner Cooper to inform the owners of various towing companies and houses of prostitution that bribe payments to deputies in the sheriff's office were to cease and all future payments were to be made directly to the sheriff. Petitioner Cooper and the others did as instructed. In each case they negotiated the amount of money to be paid by the towing companies to maintain business with the county and by the houses of prostitution to protect against arrest and prosecution. Petitioner Cooper made weekly pickups of the bribe money on behalf of petitioner Maeras. These bribe payments ended in 1973, after officers who were unaware of the payoffs began to raid the places of prostitution.

The evidence also showed that petitioner Stoller and his company, Lee Stoller Enterprises, Inc., conducted charitable fund raising for the Madison County Deputy Sheriff's Association, of which petitioner Cooper was president. In early 1972, petitioner Maeras discussed with Cooper the possible termination of Stoller's activities because of complaints regarding his solicitation methods, unless something was "in it for old John [Maeras]" (Tr. 167).[1] Cooper and

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[1] "Tr." refers to the trial transcript.

Gary Burns, the association's secretary, thereafter discussed the matter with Stoller, who agreed to pay Maeras 10% of the money solicited for the Deputy Sheriff's Association to assure the sheriff's continued support and approval of all fund raising activities. Stoller delivered the cash to either Burns or Cooper who would relay the payments to Maeras. These payoffs, which constitute the basis for the mail and wire fraud charges, ended when new officers took control of the Sheriff's Association and terminated all business transactions with Stoller about December 1, 1975.

ARGUMENT

1. Petitioners contend (Pet. 9-10) that a public entity, and particularly the Madison County Sheriff's Office, does not constitute an "enterprise" within the meaning of the Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. 1961 *et seq.* This contention, which was unanimously rejected by the en banc court, is without merit.

Section 1961(4) of RICO defines "enterprise" as follows:

> "[E]nterprise" includes any individual, partnership, corporation, association, or other legal entity and any union or group of individuals associated in fact although not a legal entity.

In *United States* v. *Turkette*, No. 80-808 (June 17, 1981), slip op. 4-5, 15-16, this Court held that this definition imposes "no restriction upon the associations embraced by [it]" and therefore broadly includes all entities within its literal scope. In accordance with this interpretation, the courts of appeals have uniformly held that public entities, such as the county sheriff's office involved in this case, may constitute a RICO "enterprise." See, *e.g.*, *United States* v. *Angelilli*, Nos. 80-1431 and 80-1434 (2d Cir. Sept. 4, 1981), slip op. 4727-4737 (New York City Civil Court); *United States* v. *Dean*, 647 F. 2d 779, 791 (8th Cir. 1981) (office of

county judge); *United States* v. *Bright*, 630 F. 2d 804, 829 (5th Cir. 1980) (county sheriff's department); *United States* v. *Altomare*, 625 F. 2d 5 (4th Cir. 1980) (county prosecutor's office); *United States* v. *Karas*, 624 F. 2d 500, 504 (4th Cir. 1980), cert. denied, 449 U.S. 1078 (1981) (same); *United States* v. *Baker*, 617 F. 2d 1060, 1061 (4th Cir. 1980) (county sheriff's department); *United States* v. *Bacheler*, 611 F. 2d 443, 450 (3d Cir. 1979) (Philadelphia traffic court); *United States* v. *Grzywacz*, 603 F. 2d 682, 686 (7th Cir. 1979), cert. denied, 446 U.S. 935 (1980) (city police department); *United States* v. *Frumento*, 563 F. 2d 1083, 1089-1092 (3d Cir. 1977), cert. denied, 434 U.S. 1072 (1978) (Pennsylvania Bureau of Cigarettes and Beverage Taxes); *United States* v. *Brown*, 555 F. 2d 407, 415-416 (5th Cir. 1977), cert. denied, 435 U.S. 904 (1978) (Macon, Georgia police department). There is thus no reason to consider petitioners' contention that a county sheriff's office may not constitute a RICO "enterprise."

2. Petitioners also contend (Pet. 11-13) that the court of appeals violated the principles of *Kotteakos* v. *United States*, 328 U.S. 750 (1946), by construing the RICO conspiracy provision, 18 U.S.C. 1962(d), to apply to criminal activity so disparate in nature that a single conspiracy can not be said to exist. They alternatively argue they were prejudiced by the district court's denial of a request to sever the trial of Stoller and his company from that of the other defendants. The court of appeals properly rejected (Pet. App. A15-A16) these claims, and neither merits further attention by this Court.

(a) Prior to the enactment of RICO, petitioners' contention that their illegal activities can not be the subject of a single conspiracy prosecution might have had some force. The various activities of petitioners could well be "too diverse to be tied together on the theory that participation in one activity necessarily implied awareness of others."

United States v. *Elliott*, 571 F. 2d 880, 902 (5th Cir.), cert. denied, 439 U.S. 953 (1978). RICO, however, was enacted to combat organized crime "by establishing new penal prohibitions, and by providing enhanced sanctions and new remedies to deal with the unlawful activities of those engaged in organized crime." Pub. L. No. 91-452, 84 Stat. 923.

One of the principal "new remedies" created by Congress in RICO is the concept of "enterprise conspiracy." As explained by the Fifth Circuit in *United States* v. *Elliott, supra*, 571 F. 2d at 902:

> [T]he object of a RICO conspiracy is to violate a substantive RICO provision—here, to conduct or participate in the affairs of an enterprise through a pattern of racketeering activity—and not merely to commit each of the predicate crimes necessary to demonstrate a pattern of racketeering activity.

Thus, when charged with participation in a RICO conspiracy, "it is irrelevant that each defendant participated in the enterprise's affairs through different, even unrelated crimes, so long as [the court] may reasonably infer that each crime was intended to further the enterprise's affairs." *Id.* at 902-903.

The record in this case is replete with evidence that petitioners conspired to participate in the affairs of the RICO enterprise, the Madison County Sheriff's Department, by committing numerous acts of "racketeering activity" as that term is defined in 18 U.S.C. 1961(1) (*i.e.*, mail fraud, wire fraud, bribery, and extortion). The evidence established that petitioner Maeras was the ringleader of various illegal activities which corrupted his public office, the Madison County Sheriff's Office. Maeras personally directed that bribe, extortion and kickback payments be made to him. Petitioner Cooper negotiated and collected these illegal

payments on behalf of Maeras. Petitioners Stoller and Lee Stoller Enterprises agreed to and did engage in a substantial number of racketeering acts relating to the affairs of the sheriff's office over an extended period of time: they paid illegal kickbacks derived from their fund raising activities to Maeras and Cooper to insure the sheriff's office's continued support of such activities.[2] As the court of appeals stated (Pet. App. A15), petitioners cannot escape liability simply because each committed different racketeering acts, because the gravamen of the conspiracy charge is not that each defendant agreed to commit a particular racketeering act, but rather that each agreed to participate in the affairs of an enterprise that would be conducted by means of two or more predicate racketeering acts.[3] Accord, *United States* v. *Elliott, supra*, 571 F. 2d at 902.

The decision in this case is thus consistent with the requirements of *Kotteakos* that a conspiracy be based on a mutual undertaking to accomplish an unlawful scheme:

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[2]Petitioner Stoller's assertion (Pet. 12) that his payment of illegal kickbacks did not further the affairs of the RICO enterprise ignores his motivation for making the payments. The payments were made to prevent Maeras from closing down a lucrative fund raising operation. "There was sufficient evidence from which a jury could find [Stoller] participated in the affairs of the Sheriff's office by bribing the Sheriff." *United States* v. *Bright*, 630 F. 2d 804, 831 (5th Cir. 1980) (payments to sheriff to insure utilization of defendant's bail bonding business).

[3]Petitioners contend (Pet. 11-12) that this application of ordinary principles of conspiracy law to the RICO statute results in an unwarranted expansion of individual liability because petitioners Lee Stoller and Lee Stoller Enterprises, Inc., participated with petitioners Cooper and Maeras only in the commission of mail and wire fraud, and not in the execution of the bribery and extortion schemes. Whatever substance this complaint might have if any defendant had been held vicariously liable on a *Pinkerton* theory for substantive offenses not encompassed within his agreed pattern of unlawful activities (*Pinkerton* v. *United States*, 328 U.S. 640 (1946)), here none of the conspirators was in fact convicted on a vicarious liability theory for any of the substantive offenses committed by other conspirators.

here, participation in the affairs of the enterprise through a pattern of racketeering activity. Furthermore, the decision does not conflict with the opinion of any other circuit court regarding the reach of a RICO "enterprise conspiracy" prosecution. *United States* v. *Bright*, 630 F. 2d 804, 812-813 (5th Cir. 1980); *United States* v. *Elliott, supra*, 571 F. 2d at 902. Further review by this Court is therefore unnecessary.

(b) The court of appeals correctly determined that the district court did not err in denying petitioners' motions for a severance. A district court has considerable discretion to deny a severance motion, and its decision may not be disturbed unless a defendant shows a clear abuse of discretion. *Opper* v. *United States*, 348 U.S. 84, 95 (1954); *United States* v. *McPartlin*, 595 F. 2d 1321, 1333 (7th Cir.), cert. denied, 444 U.S. 833 (1979); *United States* v. *Ehrlichman*, 546 F. 2d 910, 929-930 (D.C. Cir. 1976), cert. denied, 429 U.S. 1120 (1977). No such showing was made here.

Petitioners Stoller and Lee Stoller Enterprises claim (Pet. 12) they were prejudiced by the "spill over" effect of being tried with petitioners Maeras and Cooper. However, the particular facts of this case render the possibility of such prejudice highly remote. Petitioners Stoller and Lee Stoller Enterprises were not charged with or convicted of any substantive offenses committed solely by the other conspirators. Petitioners, furthermore, have pointed to no co-conspirator declaration or other incriminating evidence improperly admitted against them in reliance on an over-inclusive description of the conspiracy. Finally, only three persons and a corporation were tried together in this case. The bulk of the evidence consisted of testimony from individuals who specifically related their conversations and dealings with each of the petitioners. Thus, the evidence was largely straightforward and individualized, with little chance that the jury would convict "one set of conspirators

not on the basis of the evidence relating to them, but by imputing to them guilt based on the activities of the other set of conspirators." *United States* v. *Toliver*, 541 F. 2d 958, 962 (2d Cir. 1976). Moreover, the court instructed the jury (Tr. 2263) that it should consider the evidence separately as to each defendant and each count. In these circumstances, the district court properly denied Stoller's and Lee Stoller Enterprises' severance motions. Further review of that ruling, which by necessity turns on the facts of this particular case, is not warranted.

The arguments of petitioners Maeras and Cooper regarding their entitlement to a severance likewise do not merit the attention of this Court. Although petitioners contend (Pet. 12-13) that they were prejudiced by the district court's failure to sever the trial of Stoller and his company because such severance would time bar their prosecution for prostitution and towing company bribe payoffs between 1970 and 1973, this argument overlooks the fact that Maeras and Cooper participated in *all* the predicate acts of racketeering, including the kickback scheme with Stoller that continued until 1975. Therefore, even if Stoller and his company had been severed from the trial of Maeras and Cooper, the prosecution of the latter on the RICO conspiracy charge would not have been time barred, the indictment having been brought within five years of the latest racketeering acts in which they participated. See 18 U.S.C. 1961(5).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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OCTOBER 1981

DOJ-1981-10